IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6013 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

DIVISIONAL CONTROLLER G.S.R.T.C. - Petitioner(s)

Versus

MALANGSHA MAHMADSHA DIWAN (ART-B TYPE FITTRE) - Respondent(s)

==========

Appearance :

MR KM PARIKH for Petitioner No(s).: 1.

MS PARAGI K PARIKH for Petitioner No(s).: 1.

RULE SERVED for Respondent No(s).: 1.

==========

CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 19/07/2005

ORAL JUDGMENT

1.0 The petitioner Corporation has challenged the award dated 07.12.1998 passed by the Labour Court, Vadodara in

Reference No.445 of 1996, whereby the said reference was partly allowed.

2.0 The brief facts of the case are that the respondent herein was working as an Art B Tyre Fitter with the petitioner Corporation. It is the case of the petitioner that the respondent had remained unauthorizedly absent from duty during the period from 14.07.1995 to 05.08.1995. Therefore, charge-sheet was issued and departmental inquiry was held against him. Since the charges leveled against the respondent were proved, he was dismissed from service w.e.f. 20.10.1995.

2.1 Against the above order, the petitioner raised a dispute, which culminated into a reference being Reference (LCV) No.445 of 1996. The Labour Court, Vadodara, by impugned award, directed the petitioner to reinstate the respondent on his original post with continuity of service and 25 per cent back wages. Hence, this petition.

3.0 I have heard learned counsel for the parties and perused the documents placed on record. The Labour Court while exercising powers under Section 11(A) of the

Industrial Disputes Act, 1947, has substituted the order of dismissal by granting reinstatement with continuity of service. However, while doing so, it has not imposed any penalty on the respondent. Looking to the past record of the respondent that as many as 14 defaults were committed by him, the Labour Court ought to have imposed some penalty on him. In fact, it has awarded 25 per cent back wages to the respondent.

3.1 On account of the long unauthorized absenteeism of the respondent, the smooth functioning of the petitioner Corporation was affected. Therefore, looking to the gravity of misconduct, some penalty is required to be imposed on the respondent.

4.0 In above view of the matter, this petition is partly allowed. The impugned award of the Labour Court as regards granting reinstatement with continuity of service is confirmed. However, the direction qua awarding 25 per cent back wages is substituted by imposing a penalty of stoppage of ONE increment with future effect. Hence, the respondent shall not be entitled for any back wages as awarded by the Labour Court. With the aforesaid modification, the petition stands disposed of. Rule is

made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

pravin/ *